IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 8020 OF 2005
IN
CRIMINAL APPEAL NO.1034 OF 2005

Mohammed Akram Mohammed Munawar Shaikh And Ors. ...Applicants
Vs.
The State of Maharashtra ...Respondent

Mr. M.S.Mohite Adv. for Applicants
Mr. V.B. Konde Deshmukh APP for the State

CORAM : B.H.MARLAPALLE &
SMT.ROSHAN DALVI, JJ.
DATED : 23RD JANUARY 2006.

P.C.

1. The Applicants who are the original accused in Sessions Case No.490 of 2002 have been convicted for offence under Sections 302, 201 r.w. 34 of Indian Penal Code under the Judgment and order dated 30th September 2005 of the learned Additional Sessions Judge, Mumbai and have been sentenced to imprisonment for life. The accused have taken out this application for being released on bail pending the appeal.

2. We have gone through the copy of the evidence led in the above sessions case which has been produced by the applicants. The applicants are charged with having committed murder of one Suresh Balu Kumbhar on 19th February 2002 at 10.30 p.m. The accused knew the said deceased Suresh. Accused No.1, who was to marry one Razia had certain quarrel with the deceased since 3,4 months prior to the incident as well as on the date of the incident itself. All the 3 accused had come to the house of the deceased and took him out at 10.30 p.m. On the night of the incident and they all had gone to Potia-Kotla.

3. The deceased never returned home; his body was fished out of a creek. It was identified by the complainant, his father and accordingly the criminal machinery was set in motion.

4. The deceased was found strangulated. All the injuries were seen to be ante-mortem. In all 7 fatal injuries have been seen including a horizontal, complete ligature mark around his neck encircling it. The Medical report shows

death due to strangulation with multiple injuries over the head, neck and face.

5. At the instance of accused no.2 a nylon rope used to strangulate the deceased was recovered from a tank of Sulabh Shauchalaya.

6. It is an admitted position that all the accused and the deceased had been to the room of a prostitute who has been examined by the prosecution. The evidence of the prostitute shows that accused no.1 was her regular customer and looked frightened on that day. He was with her only for 10 minutes unlike his other usual visits when he conversed with her and then remained with her.

7. The public toilet where the deceased was murdered was shown at the instance of the accused no.3. The evidence of the toilet keeper is that he knew all 3 of them and had seen all of them that night. He recognized and identified the dead body by his shirt. The accused had threatened him.

8. Though the evidence of the aforesaid 2

independent witnesses show all 3 of them together, a motive can be attributed clearly upon accused no.1 since he had a quarrel with the deceased in respect of the lady whom he wanted to marry. Her evidence further shows that the deceased as well as accused no.1 had met her earlier that day.

9. The role of accused no.1 in committing murder of the deceased Suresh has been brought out in the evidence. He therefore cannot be let out on bail pending the appeal. Clear evidence of overt acts by accused nos.2 and 3 is not shown prima facie though independent witnesses do show that they were together with accused no.1. We therefore, feel that accused nos.2 and 3 deserve to be released on bail pending the appeal.

10. The application for bail of accused no.1 is rejected. Accused nos.2 and 3 are granted bail on the same terms but upon a fresh bail bonds.

(ROSHAN DALVI, J.) **(B.H.MARLAPALLE, J.)**